

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAY S. WALKER JOSE A. SUAREZ, T. SCOTT CASE,
MICHIKO KOBAYASHI and ANDREW P. GOLDEN

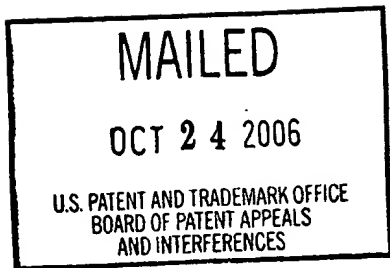
Application No. 09/605,818

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on October 11, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

In response to the Examiner's Answer mailed June 15, 2006, appellants filed a Reply Brief on August 15, 2006.

The examiner mailed an action on September 22, 2006 noting that the Reply Brief had been considered and entered. The action also included significant rebuttals to new issues raised in the Reply Brief. The examiner's rebuttals are extensive to the point of constituting a Supplemental Examiner's Answer. The Manual Of Patent Examining Procedure (MPEP) § 1208 (8th ed., Rev. 3, August 2005) states in part:



II. EXAMINER'S ANSWER TO A REPLY BRIEF

...

If a reply brief is filed in compliance with 37 CFR 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. ...

In addition, the examiner may:

...

(B) Furnish a supplemental examiner's answer responding to any new issue raised in the reply brief. (see MPEP § 1207.5).

Any supplemental examiner's answer must be approved by the Technology Center (TC) Director or designee. (emphasis added).

As per the above, although a Supplemental Examiner's Answer is permitted in a response to a Reply Brief, it must be approved by persons authorized to grant such approval. The examiner's acknowledgment of the Reply Brief and accompanying rebuttals, does not contain the required authorization. Correction is required.

Additionally, it is noted that if the examiner wishes to maintain the rebuttals with the proper authorization, the examiner is directed to have a copy of the relevant portions from **"BARRONS Real Estate Guides, Dictionary of Real Estate Terms, second edition, 1987"** from which the examiner references a definition, scanned into the application Image File Wrapper (IFW). Correction is required.

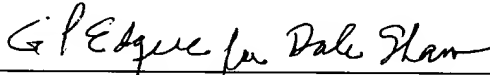
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Accordingly, it is

ORDERED that the application is being returned to the Examiner

- a) to resubmit a new action acknowledging receipt of the Reply Brief,
with proper approval to include a Supplemental Examiner's Answer
if the examiner wishes to maintain the arguments in the current
acknowledgment,
- b) to have a copy of the relevant portions noted above scanned into the application
IFW, if applicable, or
- c) resubmit a new action acknowledging receipt of the Reply Brief:
without presenting any significant response therein, and
- d) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
DALE M. SHAW
Acting Chief Appeals Administrator
(571) 272-9797

DMS/vsh

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